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No. 84-622

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1984

—◆—  
EDDIE STEAMSHIP COMPANY LTD.,

*Petitioner,*

—against—

P.T. KARANA LINE,

*Respondent.*

=====  
**BRIEF IN OPPOSITION TO THE PETITION  
FOR A WRIT OF CERTIORARI**  
=====

BRIAN D. STARER, *Counsel of Record*  
JOHN M. TORIELLO  
*Counsel for Respondent*  
One State Street Plaza  
New York, New York 10004  
(212) 344-6800

HAIGHT, GARDNER, POOR & HAVENS  
*Of Counsel*

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## **QUESTIONS PRESENTED FOR REVIEW**

1. Did the District Court err in granting a preliminary injunction without an adequate showing of irreparable injury and likelihood of success on the merits?

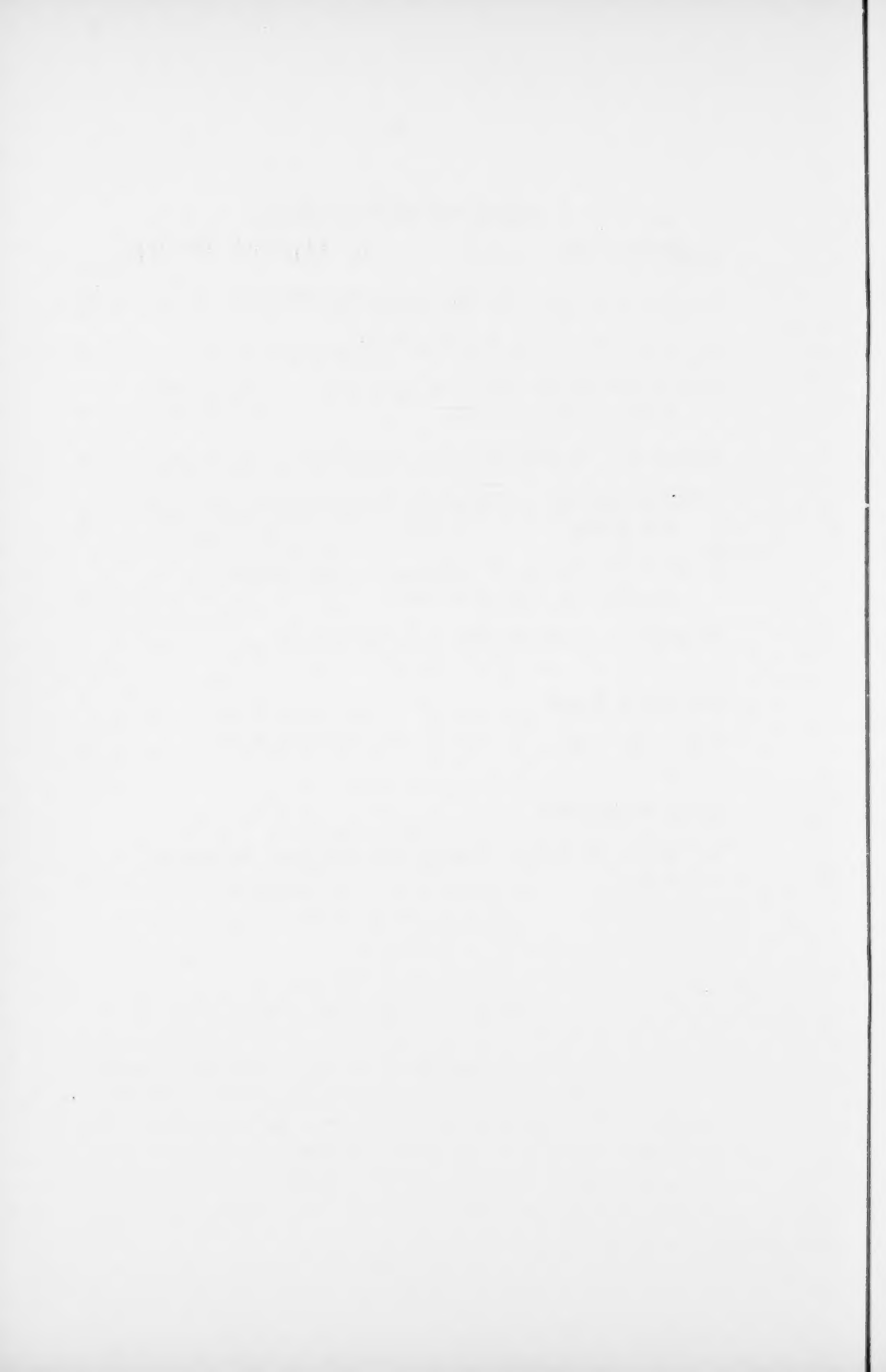
2. Should the Court of Appeals for the Second Circuit have reviewed the jurisdiction of the District Court sitting in admiralty to issue a preliminary injunction despite its finding that a preliminary injunction would not be proper in this case in any event?

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**RULES INVOLVED**

In addition to the provisions of the United States Constitution, Statutes and Federal Rules quoted at pages 1 and 2 of the Petition, F.R.Civ.P. 65 is also involved in this action.

**STATEMENT OF THE CASE**

This action was commenced by the filing of a Verified Complaint in the United States District Court for the Southern District of New York on May 14, 1984. The verification was based on information and belief and made by a member of the firm of Petitioner's attorneys. Plaintiff and defendant are both foreign business entities. The Complaint alleged 28 U.S.C.

§ 1333 as the basis for jurisdiction and the claim was denominated as admiralty and maritime within the meaning of F.R.Civ.P. 9(h). The Petitioner, in the *ad damnum* clause, requested the District Court to issue an order directing the Respondent to release an attachment of one of the Petitioner's vessels, viz. m/v STEEL TRANSPORTER. The Order of attachment had been issued by the Supreme Court of South Africa and the vessel was levied upon pursuant to this Order while it was located in Richards Bay, South Africa. Alternatively, the Petitioner requested the Court to reduce the amount of security previously furnished by the Petitioner to the Respondent by the amount of security furnished by the Petitioner in South Africa. In addition, the Petitioner requested that damages in the amount of \$11,000 per day be awarded to Petitioner against Respondent for each day Petitioner's vessel remained under attachment. Finally, the Petitioner requested interest, costs, attorneys' fees and other relief that might seem just and fair.

Petitioner also moved by Order to Show Cause dated May 14, 1984 for an order directing the Respondent to release the m/v STEEL TRANSPORTER from attachment in Richards Bay, South Africa or, alternatively, to direct the reduction of the amount of security previously provided by any amount of security the Petitioner provided in the action pending in South Africa. The Order to Show Cause also requested damages, costs and reasonable attorneys' fees. The Petitioner supported the Order to Show Cause by two affidavits based on information and belief and made by one of the attorneys representing it in the action. In paragraph 14 of the supporting affidavit, that attorney quantified the Petitioner's damages at \$11,000 per day.

The Respondent opposed the Order to Show Cause. Oral argument of the motion was had on June 1, 1984 but a transcript of the argument was not made. On June 7, 1984 the District Court issued an order directing the Respondent to release the attachment of the m/v STEEL TRANSPORTER.

Respondent requested a stay of the District Court's order pending appeal; the District Court denied that request by Memorandum dated June 14, 1984. The Court of Appeals, on June 19, 1984, granted the stay of the injunction and scheduled the appeal for an expedited hearing. The District Court was thereafter reversed in a *per curiam* decision.

This case arises out of the charter of Respondent's vessel, m/v KARTINI, by the Petitioner in July 1981. In branch of its charterparty obligations, Petitioner loaded a dangerous cargo aboard the KARTINI and stowed it improperly in August 1981. During the subsequent voyage a hazardous condition arose from the improper stowage and dangerous nature of the cargo requiring the KARTINI to spend nearly two months in port unloading, treating and reloading the subject cargo. The Respondent suffered damages as a result of the breach which may ultimately exceed Five Million Dollars, including interest and costs.

This incident gave rise to a dispute under the relevant charterparty, which dispute was then submitted to arbitration. A partial final award was issued by the arbitrators on April 23, 1984. That partial final award was submitted to the District Court and made a part of the record on appeal to the Circuit Court. The arbitrators unanimously concluded that the Petitioner had breached its obligations under the charterparty, had improperly deducted from hire the time during which the voyage was interrupted as a result of the dangerous nature of the cargo and improper stowage, and was responsible for other damages resulting from the breach.

After the Partial Final Award was issued, Respondent sought additional security for its claims because the security previously provided had become insufficient and because Petitioner appeared to be experiencing financial difficulties. The M/V STEEL TRANSPORTER had been detained in Richards Bay, South Africa by reason of an arrest obtained by various suppliers. The Respondent obtained an attachment of the



vessel before that arrest was lifted. The vessel was also thereafter attached by other creditors and eventually it was sold on July 2, 1984 pursuant to the order of the South African Court. The fund thereby created remains in the custody of the South African court subject to the claims of Respondent and other creditors.

### **REASONS FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI**

Petitioner asserts that a writ of certiorari should be granted because the decision of the United States Court of Appeals for the Second Circuit establishes an unwarranted limitation on the power of a District Court sitting in admiralty and creates a conflict between the Second Circuit and the First and Fifth Circuits. In fact, the Second Circuit in this case declined to review the propriety of any restriction on the injunctive power of a court sitting in admiralty because this case was not, in any event, a proper case for injunctive relief. The Court expressly noted that should a proper case for injunctive relief be presented, it might "well join" the First and Fifth Circuits in holding that an admiralty court may issue an injunction. Consequently, the claimed disagreement between the First, Fifth and Second Circuits concerning the injunctive power of an admiralty court is at best hypothetical. The Petitioner's showing in support of the injunction was inadequate thereby making the jurisdictional issue moot.

## POINT I

**PETITIONER HAS FAILED TO DEMONSTRATE IRREPARABLE INJURY AND LIKELIHOOD OF SUCCESS ON THE MERITS AND ITS APPLICATION FOR INJUNCTIVE RELIEF MUST THEREFORE BE DENIED REGARDLESS OF THE POWER OF A DISTRICT COURT SITTING IN ADMIRALTY.**

Under F.R.Civ.P. 65(a) a United States District Court may only grant a preliminary injunction upon a clear showing of the need for this extraordinary remedy. The Petitioner in making this showing was required to prove both a significant threat of irreparable harm and the probability that it will succeed on the merits. 11 Wright & Miller, *Federal Practice and Procedure*, § 2948 at 430-31 (1973).

In its decision, the Second Circuit reviewed these factors (5a)\* noting that the Petitioner had already been found liable for all damages resulting from the fire; the forum chosen by Petitioner bore only a tenuous connection to the Petitioner's allegation of wrongful attachment; the forum chosen by the Petitioner was an inconvenient one; and the presence of a serious question concerning personal jurisdiction over the Respondent. These items demonstrate that Petitioner has failed to show a probability of success on the merits.

Similarly, the Petitioner in the Complaint and in the supporting affidavit quantified the damages allegedly resulting from the wrongful attachment at \$11,000 per day, presumably arising from a loss of earnings from the vessel. Those damages do not continue today since the m/v STEEL TRANSPORTER was sold at public auction in South Africa on July 2, 1984. Indeed, those damages only accrued for the few days after release of the initial arrest but before other creditors joined the

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\* Numbers with letters following refer to pages in the Appendix to the Petition for a Writ of Certiorari.

Respondent's attachment (5a-6a). Such limited, quantified money damages preclude a finding of irreparable harm. Since the sale of the vessel, Respondent's attachment along with the attachments of other creditors has been maintained on a fund of money. There is no evidence, or even claim, in the record that an attachment of a fund of money is causing irreparable harm.

The record in this case at no time supported a finding of irreparable injury or probability of success on the merits. The only harm specified by the plaintiff was the loss of approximately \$11,000 per day presumably in earnings of the vessel. Such a loss of earnings, if proven to be wrongful, can be adequately redressed through the award of money damages as requested in the Verified Complaint itself. *See, e.g. Sampson v. Murray*, 415 U.S. 61, 88-92 (1974). The Second Circuit correctly concluded that this case is not an appropriate one for the exercise of injunctive powers by a District Court. That decision does not require the exercise by this Court of its supervisory powers.

## POINT II

### THE DECISION OF THE COURT OF APPEALS FOR THE SECOND CIRCUIT IN THIS CASE DOES NOT CREATE A CONFLICT BETWEEN THE CIRCUITS.

This Court in *The Eclipse*, 135 U.S. 599 (1890), held that an admiralty court may apply equitable principles in the exercise of its jurisdiction but is not empowered to provide equitable relief such as specific performance or an accounting. That rule was confirmed again by this Court in *Schoenamsgruber v. Hamburg American Line*, 294 U.S. 454 (1935) in which the Court explained that although equitable principles might be applied in admiralty, injunctions are not issued by such courts, except in limitation of liability proceedings. *Id.* at 458.

Although this Court has relaxed the rule against providing equitable remedies in admiralty, see *Swift & Co. Packers v.*

*Compania Colombiana del Caribe*, 339 U.S. 684 (1949); *Vaughan v. Atkinson*, 369 U.S. 527 (1962), the specific limitation on the issuance of injunctions has not been repudiated. The relaxation only permits consideration of equitable relief when that claim is subsidiary to issues otherwise within admiralty. In short, the admiralty court need not be burdened with equitable claims that can be asserted and resolved in other forums.\*

The First and Fifth Circuits may have departed from this rule in *Pino v. Protection Maritime Insurance Co., Ltd.*, 599 F.2d 10, 15-16 (1st Cir. 1979) *cert. denied*, 444 U.S. 900 (1979) and *Lewis v. S.S. Baune*, 534 F.2d 1115, 1120-21 (5th Cir. 1976). In *Lewis*, the Fifth Circuit issued what amounted to an advisory opinion on the availability of injunctions in admiralty because there, as here, the Court also found that the plaintiff had failed to demonstrate a proper basis for an injunction.

The Second Circuit in the case at bar noted the First and Fifth Circuit opinions (4a-5a), as well as the decisions of this Court and other decisions of the Second Circuit. The panel declined to review the injunctive powers of admiralty, however, because an appropriate case for an injunction was not presented. It cannot be said that this decision creates a conflict between the Circuits. Indeed, the panel suggested the possibility that such a conflict would not arise, if an appropriate case for an injunction is presented.

The injunctive power of an admiralty court is not a question ripe for decision in this case. When a proper case is presented, the Circuit Court will provide its decision. That decision may, in turn, be accepted for review by this Court, should supervision actually be necessary.

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\* In this case, the propriety of the attachment in South Africa is most appropriately resolved in the South African court where all parties and the res are present. Indeed, this particular issue has been found to be a local issue subject to determination under the law of the forum granting the attachment, not the law of the place where the arbitration is conducted. *E.g., Filia Compania Naviera v. Petroship*, 1982 A.M.C. 1217 (S.D.N.Y. 1982).

**CONCLUSION**

**FOR THE FOREGOING REASONS, RESPONDENT RESPECTFULLY SUBMITS THAT A WRIT OF CERTIORARI SHOULD NOT ISSUE TO REVIEW THE DECISION BELOW.**

Respectfully submitted,

BRIAN D. STARER, *Counsel of Record*  
JOHN M. TORIELLO  
*Counsel for Respondent*  
One State Street Plaza  
New York, New York 10004  
(212) 344-6800

HAIGHT, GARDNER, POOR & HAVENS  
*Of Counsel*